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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Laramie, Wyoming, Cheyenne, Wyoming  
and Ault, Colorado)

MM Docket No. \_\_\_\_\_  
RM- \_\_\_\_\_

RECEIVED

TO: Secretary, Federal Communications Commission  
ATTN: Allocations Branch

OCT 29 2004

Federal Communications Commission  
Office of Secretary

PETITION FOR RECONSIDERATION

Laramie Mountain Broadcasting, L.L.C. ("LMB"), licensee of broadcast station KRQU(FM), Laramie, Wyoming, pursuant to Rule 1.429, files this Petition for Reconsideration of the Commission's September 29, 2004 letter ruling dismissing LMB's Petition for Rulemaking filed on February 11, 2004. LMB's Petition was dismissed due to short spacing to KARS-FM in Laramie, Wyoming. Due to a change in circumstances, that short spacing is no longer an issue and LMB's Petition for Rulemaking should, therefore, be reinstated.

In its Petition for Rulemaking LMB requests that KRQU's Channel 283C2 in Laramie, Wyoming be upgraded to channel 280C1 and that Channel 280C1 be reallocated to Ault, Colorado. In order to accommodate this request, LMB requested that Channel 277C2 be substituted for vacant Channel 280C2 in Cheyenne, Wyoming. LMB also requested that new Channel 283C2 be allotted to Laramie, Wyoming from a site that would be fully spaced for the use of Channel 280C1 in Ault, Colorado.

By letter dated September 29, 2004 the Commission returned the Petition for Rulemaking "because the proposed transmitter site for Channel 277C2 at Cheyenne is short spaced by 38.8

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kilometers to the licensed facilities of station KARS-FM, Channel 275C in Laramie, Wyoming.” The Commission acknowledged that KARS-FM had been issued a construction permit to change its transmitter site and downgrade to Channel 275C1 at a location that would be fully spaced with the proposed use of Channel 275C in Laramie, Wyoming. The Commission noted, however, that no license had been issued yet to cover the construction permit for the new facilities and that, therefore, the licensed short spaced facilities must be protected. The short spaced formerly licensed facility on Channel 275C in Laramie, Wyoming is no longer a concern. KARS-FM filed a license application for its new facilities on Channel 275C, on October 5, 2004.<sup>1</sup> KARS-FM is broadcasting from its new site as authorized. Although the license application is not yet granted, grant of the license is imminent and warrants processing LMB's rulemaking since LMB's proposal to allocate Channel 277C2 to Cheyenne is no longer short spaced.<sup>2</sup>

LMB has learned that a subsequently filed Petition for Rulemaking was filed by Mitchell Beranek requesting the use of Channel 277A in Wheatland, Wyoming. This Petition for Rulemaking is mutually exclusive with the proposal to utilize Channel 277C2 in Cheyenne, Wyoming. There are other alternate channels available for use in Wheatland and Mr. Beranek has agree to amend his

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<sup>1</sup> Rule 1.429(b) allows for consideration of new facts only under limited circumstances. "...Section 1.429(b) of the Rules provides that petitions for reconsideration relying upon facts not previously submitted will be granted only under three limited circumstances. First, the facts relate to events which have occurred or circumstances which have changed since the last opportunity to present these facts to the Commission. Second, the facts were unknown to the petitioner and could not have been timely ascertained through the exercise of ordinary diligence. Third, the Commission determines that consideration of these facts is required by the public interest." *Farmington, Grass Valley, et al*, 14 FCC Rcd 18971 at ¶9 (1999). Submission of the KARS-FM license application is a new fact which occurred after the Commission's letter dismissal of the Petition for Rulemaking. This is a material changed fact which could not have been brought up earlier and, further, is in the public interest to consider at this point.

<sup>2</sup> See, attached Engineering Statement. There are also other equitable arguments in favor of processing LMB's Rulemaking. KARS-FM agreed in another Rulemaking to downgrade and is also contractually obligated to do so. See, *Gunnison, Crawford, et al*, DA-04-2908 at n. 11 (released September 20, 2004), and Engineering Statement.

Petition for Rulemaking to specify use of alternate full spaced Channel 298A in lieu of Channel 277A. *See*, attached Consent.

The public interest would clearly be served by the proposed Amendment to the Table of Allotments proposed by LMB.<sup>3</sup> In sum, the proposal would result in a first transmission service to Ault, Colorado and will vastly improve the service currently provided by KRQU. The reallocation of Channel 280C1 to Ault, Colorado will result in 1 mV signal coverage to approximately 16,656 square kilometers and 604,178 people, which compares to the current coverage of KRQU of approximately 7,831 square kilometers and 33,619 people. This results in a net gain in service to 570,559 people and an additional 8,825 square miles. In addition, the proposal will result in allocation to Laramie, Wyoming of a new Channel 283 with a site restriction of 12 kilometers NW of Laramie, Wyoming.

The following is a summary of the proposed changes to the FM table of allotments, 73.202(b)(1):

COMMUNITY	PRESENT	PROPOSED
Cheyenne, WY	229A, 250C1, 260C2, 264C1, 280C2, 285C2, 292A	229A, 250C1, 260C2, 264C1, 277C2, <sup>4</sup> 285C2, 292A
Laramie, WY	236C, 244C2, 254A, 275C, 283C2	236C, 244C2, 254A, 275C1, 283C2 <sup>5</sup>
Ault, CO	-----	280C1 <sup>6</sup>

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<sup>3</sup> LMB incorporates its Petition for Rulemaking and attached engineering.

<sup>4</sup> Allotment point 41° 22' 59"N, 104° 40' 06" W, site restriction 30.4 km northeast of Cheyenne, Wyoming.

<sup>5</sup> Proposed allotment point 41° 23' 00" N, 105° 41' 48"W -- site restriction 12 km northwest of Laramie, Wyoming.

<sup>6</sup> Allotment point 40° 45' 00" N, 105° 09' 12" W, site restriction 40.3 km northwest of Ault, Colorado.

-- 4 --

LMB incorporates its Petition for Rulemaking and hereby expresses its intention to file an application to operate on Channel 280C1 in Ault, Colorado and, if granted, to build the facility expeditiously. LMB will also participate in an auction and file an application for Channel 283C2 in Laramie, Wyoming as reallocated and, if its application is granted, will build the station promptly.

Respectfully submitted,

**LARAMIE MOUNTAIN BROADCASTING, LLC.**

**GAMMON & GRANGE, P.C.**  
8280 Greensboro Drive, 7th Floor  
McLean, VA 22102-3807  
(703) 761-5000

By:   
A. Wray Fitch III

October 28, 2004

[K:\0524\Ault, CO\Petition for Reconsideration.wpd]

**CONSENT OF MICHELL BERANEK FOR USE OF ALTERNATE CHANNEL  
IN PETITION FOR RULEMAKING FOR A NEW CHANNEL AT WHEATLAND,  
WYOMING**

I, Mitchell Beranek, hereby consent to the substitution of channel 298A in lieu of channel 277A as proposed in my Petition for Rulemaking for a new FM allotment at Wheatland, Wyoming.

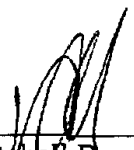
It has come to my attention that Laramie Mountain Broadcasting ("LMB") is seeking to substitute channel 277C2 at Cheyenne for the currently vacant allotment of channel 280C2 at Cheyenne, Wyoming.

I have no objections to these substitutions as it will not effect my original proposal for a new class A allotment for Wheatland, Wyoming.

I will file an amendment to my original Petition for Rulemaking specifying the use of channel 298A in place of channel 277A at Wheatland, Wyoming.

I also certify that I have not been compensated or promised any future consideration in any way for agreeing to this consent.

Respectfully Submitted,

  
\_\_\_\_\_  
Mitchell Beranek,  
7607 Schrader Lane  
Cheyenne, WY 82009  
307-635-0125

DATED: October 29, 2004

## **ENGINEERING STATEMENT**

This engineering statement is to support the Petition for Reconsideration file by Laramie Mountain Broadcasting, LLC ("LMB") in regards to its Petition for Rulemaking to modify the operation of KRQU Laramie, Wyoming to 1) change its city of license from Laramie, Wyoming to Ault, Wyoming. 2) One step change channels from 283C2 to channel 280C1. 3) Re-allot channel 283C2 to Laramie, Wyoming. 4) Substitute channel 277C2 for the vacant allotment of channel 280C2 at Cheyenne, Wyoming.

LMB has confirmed that all of the original engineering provided in its original Petition for Rulemaking is still valid with the following exceptions:

- 1) a Petition for Rulemaking filed by Mitchell Beranek for the use of Channel 277A at Wheatland, Wyoming. This potentially conflicts with the use of Channel 277C2 at Cheyenne, Wyoming.
- 2) Reserved allotment points for channel 280C2 at Cheyenne, Wyoming filed by three separate parties in the upcoming FM broadcast auction # 37.

In regards to the Petition for Rulemaking filed by Mitchell Beranek, LMB has contacted Mr. Beranek and he has given LMB his consent to the substitution of Channel 298A in his Petition in place of channel 277A for use at Wheatland, Wyoming (See attached consent letter). The Petition for Rulemaking filed by Mr. Beranek has not yet been acted upon by the Commission. Also, the proposed substitution of channel 298A for channel 277A at Wheatland fits at the same coordinates as proposed in Mr. Beraneks original proposal.

In regards to the reserved allotment points for channel 280C2 at Cheyenne, Wyoming. The original Petition for Rulemaking filed by LMB was filed before these reserved allotment points were filed for. Therefore, they should not be protected should the commission decide to accept this Petition for Reconsideration.

In the letter received by LMB from the Commission dated September 29, 2004 returning LMB's Petition for Rulemaking. The Commission's reason for returning LMB's petition is based upon the apparent short spacing towards KARS-FM Laramie, Wyoming on channel 275C. LMB had demonstrated in its original petition that AGM-Nevada, LLC ("AGM"), licensee of KARS-FM, Laramie, WY, had received a Construction Permit (BMPH-20020926ABK) to one-step downgrade KARS-FM. This downgrade was part of a consent to downgrade KARS-FM filed by AGM in regards to MB Docket No. 03-144, RM-10733, RM-10788, RM-10789. This consent to downgrade was agreed to in that rulemaking prior to the filing of LMB's Rulemaking for KRQU Laramie. Thus, consent to downgrade KARS-FM was already on file with the Commission prior to the filing of LMB's Petition for Rulemaking. Thus, the Petition for Rulemaking filed by LMB was not contingent upon a licensed being issued for the operation of the new proposed downgraded operation of KARS-FM.

It was also noted in the original petition that KARS-FM was listed as silent and off the air from its licensed Class C facilities. KARS-FM had also cancelled its tower lease which it had with the Petitioner, LMB, for its licensed Class C facilities. LMB was the previous licensee of KARS-FM Laramie (formerly KRQU), and sold KARS-FM to AGM. As part of the agreement for sale, AGM agreed to purchase the station with the understanding LMB had Petitioned the Commission to change the city of license from

Laramie, Wyoming to Laporte, Colorado on Channel 275C2 (this proposal would have also complied with the planned use by LMB of channel 277C2 at Cheyenne, WY). If this Petition was denied or withdrawn, then AGM would agree to a new class C1 operation of KARS-FM at a site specified by LMB. AGM ultimately withdrew the Petition for Rulemaking to change the city of license for KARS-FM from Laramie, WY to Laporte, CO and then filed a one-step downgrade application to a class C1 for KARS-FM. LMB assumes that this was done not only to abide by the terms of its sale contract with LMB (on file at the commission as part of the license assignment application) but also as part of the consent to downgrade KARS-FM in MB Docket No. 03-144.

It should also be noted that AGM has begun program tests from its new class C1 facilities listed in BMPH-20020926ABK and filed a license application, BLH-20041004ACT.

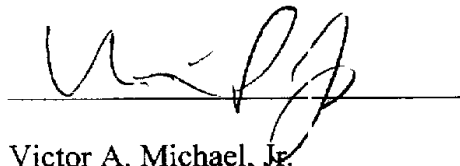
It is apparent, that AGM not only consented to downgrade KARS-FM, but also was contractually obligated in its sales agreement when AGM purchased KARS-FM from LMB. Both of these actions by AGM were agreed too prior to the date of filing of Petition for Rulemaking filed by LMB for KRQU-FM Laramie. Thus, LMB feels that the operation of KARS-FM on Channel 275C is not, and was not, contingent upon the Petition for Rulemaking filed by LMB.

Attached to this engineering statement is Figure 1 which shows that channel 277C2 can still be allotted to Cheyenne, Wyoming. Figure 2 shows that channel 280C1 can still be allotted to Ault, Colorado, and Figure 3, which shows that channel 298A can be allotted to Wheatland, Wyoming to substitute the proposed allotment of channel 277A filed by Mitchell Beranek.



LMB respectfully asks the Commission to reconsider its decision to return LMB's original Petition for Rulemaking filed by LMB licensee of KRQU Laramie, Wyoming and institute a Proposed Rulemaking in regards to its original petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Victor A. Michael, Jr.", is written over a horizontal line.

Victor A. Michael, Jr.  
Sole Member  
Technical Consultant  
Laramie Mountain Broadcasting, LLC  
6807 Foxglove Drive  
Cheyenne, WY 82009  
307-778-9318  
[vicmichael@aol.com](mailto:vicmichael@aol.com)

Figure 1. Channel spacing study, Channel 277C2  
Cheyenne, Wyoming

REFERENCE  
41 22 59 N  
104 40 06 W

CLASS = C2  
Current Spacings

DISPLAY DATES  
DATA 10-28-04  
SEARCH 10-29-04

----- Channel 277 - 103.3 MHz -----

Call	Channel	Location		Dist	Azi	FCC	Margin	
RADD	ADD	277C2	Cheyenne	WY	0.00	0.0	190.0	-190.00
RADD	ADD	277A	Wheatland	WY	80.22	343.3	166.0	-85.78
RADD	ADD	280C1	Cheyenne	WY	15.78	71.5	79.0	-63.22
KARSEFM	LIC	275C	Laramie	WY	66.18	263.3	105.0	-38.82
AL280	VAC	280C2	Cheyenne	WY	29.55	203.0	58.0	-28.45
RDEL	DEL	280C2	Cheyenne	WY	29.55	203.0	58.0	-28.45
AP280	APP	280C2	Cheyenne	WY	41.30	193.5	58.0	-16.70
AP280	APP	280C2	Cheyenne	WY	47.19	201.9	58.0	-10.81
AP280	APP	280C2	Cheyenne	WY	55.80	187.6	58.0	-2.20
ALLO	VAC	277A	Hanna	WY	167.12	289.5	166.0	1.12
KRFX.A	APP-D	278C	Denver	CO	189.42	194.8	188.0	1.42
KRFX.A	APP-D	278C	Denver	CO	189.42	194.8	188.0	1.42
KRFX.A	APP-D	278C	Denver	CO	189.42	194.8	188.0	1.42
RDEL	DEL	278C	Denver	CO	189.67	194.8	188.0	1.67
KRFX	LIC	278C	Denver	CO	189.67	194.8	188.0	1.67
RADD	ADD	280C1	Ault	CO	81.26	210.2	79.0	2.26
RADD	ADD	278C0	Denver	CO	189.67	194.8	176.0	13.67
RADD	ADD	275C1	Laramie	WY	102.57	238.6	79.0	23.57
KARSEFM	CP	275C1	Laramie	WY	102.95	237.1	79.0	23.95
AL276	RSV	276C	Parker	CO	222.83	165.9	188.0	34.83
KAVD.C	CP	276C	Parker	CO	223.46	165.0	188.0	35.46
KOZYFM	LIC	280C3	Gering	NE	96.38	55.9	56.0	40.38
KAVD	LIC-N	276C1	Limon	CO	229.74	157.4	158.0	71.74

Figure 2. Channel spacing study, Channel 280C1  
Ault, Colorado

REFERENCE  
40 45 00. N  
105 09 12 W

CLASS = C1  
Current Spacings

DISPLAY DATES  
DATA 10-28-04  
SEARCH 10-29-04

----- Channel 280 - 103.9 MHz -----

Call		Channel	Location		Dist	Azi	FCC	Margin
RADD	ADD	280C1	Ault	CO	0.00	0.0	245.0	-245.00
AP280	APP	280C2	Cheyenne	WY	35.23	41.0	224.0	-188.77
AP280	APP	280C2	Cheyenne	WY	36.67	65.7	224.0	-187.33
AP280	APP	280C2	Cheyenne	WY	43.38	45.8	224.0	-180.62
RDEL	DEL	280C2	Cheyenne	WY	52.07	33.9	224.0	-171.93
AL280	VAC	280C2	Cheyenne	WY	52.07	33.9	224.0	-171.93
RADD	ADD	280C1	Cheyenne	WY	93.70	36.2	245.0	-151.30
KOZYFM	LIC	280C3	Gering	NE	173.21	43.8	211.0	-37.79
KRQU	LIC	283C2	Laramie	WY	67.19	338.1	79.0	-11.81
KRQU.C	CP -N	283C2	Laramie	WY	72.79	341.7	79.0	-6.21
KYZX	LIC-N	280C2	Pueblo West	CO	224.07	173.5	224.0	0.07
RADD	ADD	277C2	Cheyenne	WY	81.26	29.9	79.0	2.26
RDEL	DEL	283C2	Laramie	WY	82.42	344.0	79.0	3.42
RADD	ADD	283C2	Laramie	WY	83.85	327.3	79.0	4.85
KRFX.A	APP-D	278C	Denver	CO	113.13	183.6	105.0	8.13
KRFX.A	APP-D	278C	Denver	CO	113.13	183.6	105.0	8.13
KRFX.A	APP-D	278C	Denver	CO	113.13	183.6	105.0	8.13
KRFX	LIC	278C	Denver	CO	113.41	183.5	105.0	8.41
RDEL	DEL	278C	Denver	CO	113.41	183.5	105.0	8.41
RADD	ADD	279C0	Akron	CO	205.02	108.0	196.0	9.02
KFMUFM	LIC-N	281C3	Oak Creek	CO	156.71	249.1	144.0	12.71
RADD	ADD	278C0	Denver	CO	113.41	183.5	94.0	19.41
RADD	ADD	279C1	Akron	CO	201.45	111.8	177.0	24.45
KSNOFM	LIC	280A	Snowmass Village	CO	224.94	222.6	200.0	24.94
KQLT	LIC	279C	Casper	WY	241.37	337.0	209.0	32.37
KTCL	LIC-Z	227C	Fort Collins	CO	75.66	163.5	41.0	34.66
RDEL	DEL	227C	Fort Collins	CO	75.66	163.5	41.0	34.66
KJCD	LIC-N	282C1	Longmont	CO	117.05	180.5	82.0	35.05
AL281	VAC	281A	Guernsey	WY	171.85	11.3	133.0	38.85
RADD	ADD	282C3	Pine Bluffs	WY	121.17	56.1	76.0	45.17
RADD	ADD	277A	Wheatland	WY	148.09	6.6	75.0	73.09

Figure 3, Channel spacing study, Channel 298A  
Wheatland, Wyoming

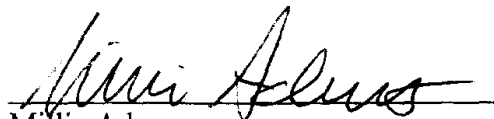
REFERENCE			CLASS = A			DISPLAY DATES		
42 04 28. N						DATA 10-28-04		
104 56 51 W			Current Spacings			SEARCH 10-29-04		
----- Channel 298 - 107.5 MHz -----								
Call	Channel		Location		Dist	Azi	FCC	Margin
KKAW	LIC-N	297C3	Albin	WY	96.55	131.9	89.0	7.55
KQKS	LIC	298C	Lakewood	CO	264.77	184.0	226.0	38.77
KRVK	LIC-N	300C	Midwest	WY	134.36	304.1	95.0	39.36
KASS	LIC	295C	Casper	WY	134.46	304.1	95.0	39.46
KPAW.A	APP-Z	300C1	Fort Collins	CO	132.59	189.0	75.0	57.59
KPAW.A	APP-D	300C1	Fort Collins	CO	132.59	189.0	75.0	57.59
KRVK.A	APP-N	300C1	Midwest	WY	134.36	304.1	75.0	59.36
KRVK.A	APP-N	300C1	Midwest	WY	134.36	304.1	75.0	59.36
KRVK	RSV	300C1	Midwest	WY	134.36	304.1	75.0	59.36
KRVK	RSV	300C1	Midwest	WY	134.36	304.1	75.0	59.36

**CERTIFICATE OF SERVICE**

I, Millie Adams, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent this 29th day of October, 2004, by first-class, postage prepaid, U.S. Mail, copies of the foregoing PETITION FOR RECONSIDERATION to the following:

Mr. John A. Karousos  
Assistant Chief, Audio Division  
Office of Broadcast License Policy  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-A266  
Washington, D.C. 20554

Mitchell Beranek  
7607 Schroder Lane  
Cheyenne, WY 82009

  
Millie Adams